

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRYL RANSOM,

Petitioner,

v.

BEN CURRY, Warden,

Respondent.

No. CV 08-3571 CW

ORDER DENYING PETITION
FOR WRIT OF HABEAS
CORPUS

_____/ (Docket No. 28)

INTRODUCTION

Petitioner, a pro se state prisoner, filed this petition in 2007 pursuant to 28 U.S.C. § 2254. Petitioner challenges a 2005 finding by the California Board of Parole Hearings (Board) that he is unsuitable for parole.¹ For the reasons set forth below, the petition is DENIED.

BACKGROUND

In 1983, Petitioner shot and killed Arthur Bernard Chappell while burglarizing Chappell's house. Petitioner left Chappell's house after killing him, and returned later that night with a "crime partner" and took Chappell's stereo equipment. Petitioner asserts that his shooting of Chappell was an accident caused when Chappell awoke and startled Petitioner. Petitioner asserts that he

¹ Petitioner filed this action in the Central District of California. The action was transferred to the Northern District on the grounds that venue was proper here because Petitioner is currently housed in the Northern District in Soledad State Prison. (Docket No. 22.)

1 was not burglarizing the residence, but rather was trying to
2 recover PCP from Chappell, who had failed to pay Petitioner for the
3 drug. (Ans., Lodgement 3 (Transcript of Parole Hearing) at 11-12.)
4 In 1989, Petitioner, pursuant to a plea agreement, plead guilty to
5 second degree murder, see Cal. Pen. Code § 187. (Am. Pet. at 2.)
6 The Superior Court of Los Angeles sentenced Petitioner to fifteen
7 years to life in state prison. (Id.)

8 In September, 2005, the Board found Petitioner unsuitable for
9 parole. In reaching its decision, the Board reviewed Petitioner's
10 record, including the circumstances of the commitment offense, his
11 criminal and social history, his prison disciplinary record, his
12 psychological report, his participation in self-help, and his
13 parole plans. The Board found that the offense was carried out in
14 manner that was "especially cruel and callous," and which
15 "demonstrates an exceptional[ly] callous disregard for human
16 suffering." (Ans., Lodgement 3 at 91.) The Board also found that
17 the "motive for the crime was very trivial in relation to the
18 offense," in that Chappell was killed over a drug deal. (Id. at
19 91-92.)

20 The Board expressed great concern over Petitioner's unstable
21 social history and his rather extensive criminal history. His
22 social history includes his parents' separation when he was
23 thirteen, the shooting death of a brother, and his witnessing the
24 highly traumatic shooting death of a childhood friend when
25 Petitioner was ten or eleven. (Id. at 20-21 & 25-26.)
26 Petitioner's criminal history, which in addition to nine adult
27 arrests (id. at 35), includes an arrest at the age of fourteen for
28

1 assault with a deadly weapon, and detention in the California Youth
2 Authority (CYA) for his association in the gang-related killing of
3 man. Petitioner also served time in the CYA for his role in the
4 kidnapping of a gang member. (Id. at 22-24, 30-31.)

5 The Board reviewed Petitioner's prison disciplinary history
6 and latest psychological report. It noted that Petitioner had
7 three serious disciplinary infractions, the last occurring in 1997,
8 most of which involved a "fight or violence," such as "[r]esisting
9 staff, fighting, [or] [c]ombat." (Id. at 60-61, 62, 97.)

10 Petitioner's latest psychological report, authored in 1998, states
11 that, in light of various factors including his strong family
12 support, Petitioner's "violence potential if released to the
13 community is . . . below average." (Id. at 63-64.) The report
14 noted, however, that if Petitioner were to use drugs again, his
15 violence potential "would be considerably higher." (Id. at 64.)
16 The Board took notice that Petitioner had a "history of anti-social
17 personality disorder." (Id. at 63.)

18 The Board acknowledged that Petitioner had participated
19 extensively in self-help programs, including Narcotics Anonymous
20 and anger management. (Id. at 59 & 60.) It was also noted that
21 Petitioner had parole plans, which included offers of support from
22 his wife, and working at his uncle's trucking company. (Id. at 56-
23 57 & 65.) The Board also heard from a representative of the Los
24 Angeles District Attorney, who voiced his office's opposition to
25 parole. (Id. at 85.) The Board found Petitioner unsuitable for
26 parole based on the circumstances of his commitment offense, his
27 criminal history, and a need for further participation in self-
28

1 help. (Id. at 91-97.)

2 In response to the Board's decision, Petitioner filed state
3 habeas petitions, later denied, in the California superior,
4 appellate, and supreme courts. (Pet. at 4-5.) The Superior Court
5 of Los Angeles issued the last reasoned decision. That court found
6 that the Board's decision was supported by some evidence, including
7 that the commitment offense was carried out in a dispassionate and
8 calculated manner, and that Petitioner needed additional
9 institutional programming, and had a juvenile criminal history that
10 included murder and an unstable social history. (Ans., Lodgement 5
11 (Order of the Los Angeles Superior Court) at 1-2.)

12 As grounds for federal habeas relief, Petitioner alleges that
13 (1) the Board's decision violated his rights to due process because
14 it was not supported by some evidence and (2) the Board must
15 provide the "reciprocal benefits" promised to Petitioner in his
16 plea agreement.²

17 DISCUSSION

18 I. Standard of Review

19 Because this case involves a federal habeas corpus challenge
20 to a state parole eligibility decision, the applicable standard is
21 contained in the Antiterrorism and Effective Death Penalty Act of
22 1996 (AEDPA). McQuillion v. Duncan, 306 F.3d 895, 901 (9th Cir.
23 2002).

24
25 ² Petitioner has advanced several other claims--that the
26 Board's decision was pro forma, that the Board ignored evidence in
27 favor of a suitability finding and that the Board disregarded the
28 sentencing matrix--which will be addressed under the Court's
analysis of the first claim.

1 Under AEDPA, a district court may not grant habeas relief
2 unless the state court's adjudication of the claim: "(1) resulted
3 in a decision that was contrary to, or involved an unreasonable
4 application of, clearly established Federal law, as determined by
5 the Supreme Court of the United States; or (2) resulted in a
6 decision that was based on an unreasonable determination of the
7 facts in light of the evidence presented in the State court
8 proceeding." 28 U.S.C. § 2254(d); Williams v. Taylor, 529 U.S.
9 362, 412 (2000). A federal court must presume the correctness of
10 the state court's factual findings. 28 U.S.C. § 2254(e)(1).

11 Where, as here, the highest state court to reach the merits
12 issued a summary opinion which does not explain the rationale of
13 its decision, federal court review under § 2254(d) is of the last
14 state court opinion to reach the merits. Bains v. Cambra, 204 F.3d
15 964, 970-71, 973-78 (9th Cir. 2000). In this case, the last state
16 court opinion to address the merits of Petitioner's claim is that
17 of the superior court.

18 II. Analysis

19 A. Due Process Claim

20 Petitioner claims that the Board's decision deprived him of
21 his right to due process because it was not based on "some
22 evidence" that Petitioner is not suitable for parole, i.e., that if
23 released, he poses an unreasonable risk of danger to society. (Am.
24 Pet. at 5.) Petitioner also contends that the Board's continued
25 reliance on the circumstances of the commitment offense violates
26 due process, that the Board engaged in a pro forma review, ignored
27 the guidelines of the sentencing matrix, and failed to consider
28

1 evidence of parole suitability. (Id. at 5-6(B).)

2 The United States Supreme Court has clearly established that a
3 parole board's decision deprives a prisoner of due process with
4 respect to his constitutionally protected liberty interest in a
5 parole release date if the board's decision is not supported by
6 "some evidence in the record," or is "otherwise arbitrary." Sass
7 v. California Bd. of Prison Terms, 461 F.3d 1123, 1128 (9th Cir.
8 2006) (citing Superintendent v. Hill, 472 U.S. 445, 457 (1985)).

9 When assessing whether a state parole board's suitability
10 determination was supported by "some evidence," the court's
11 analysis is framed by the statutes and regulations governing parole
12 suitability determinations in the relevant state. Sass, 461 F.3d
13 at 1128. Accordingly, in California, the court must look to
14 California law to determine the findings that are necessary to deem
15 a prisoner unsuitable for parole, and then must review the record
16 to determine whether the state court decision constituted an
17 unreasonable application of the "some evidence" principle. Id.

18 California law provides that a parole date is to be granted
19 unless it is determined "that the gravity of the current convicted
20 offense or offenses, or the timing and gravity of current or past
21 convicted offense or offenses, is such that consideration of the
22 public safety requires a more lengthy period of incarceration."
23 Cal. Pen. Code § 3041(b).

24 The California Code of Regulations sets out the factors
25 showing suitability or unsuitability for parole that the Board is
26 required to consider. See 15 Cal. Code Regs. tit. 15 § 2402(b).
27 These include "[a]ll relevant, reliable information available,"

1 such as,

2 the circumstances of the prisoner's social
3 history; past and present mental state; past
4 criminal history, including involvement in
5 other criminal misconduct which is reliably
6 documented; the base and other commitment
7 offenses, including behavior before, during
8 and after the crime; past and present attitude
9 toward the crime; any conditions of treatment
10 or control, including the use of special
11 conditions under which the prisoner may safely
12 be released to the community; and any other
13 information which bears on the prisoner's
14 suitability for release. Circumstances which
15 taken alone may not firmly establish
16 unsuitability for parole may contribute to a
17 pattern which results in finding of
18 unsuitability.

19 Id.

20 Circumstances tending to show unsuitability for parole include
21 the nature of the commitment offense and whether "[t]he prisoner
22 committed the offense in an especially heinous, atrocious or cruel
23 manner." Id. at (c). This includes consideration of the number of
24 victims, whether "[t]he offense was carried out in a dispassionate
25 and calculated manner," whether the victim was "abused, defiled or
26 mutilated during or after the offense," whether "[t]he offense was
27 carried out in a manner which demonstrates an exceptionally callous
28 disregard for human suffering," and whether "[t]he motive for the
crime is inexplicable or very trivial in relation to the offense."

29 Id. Other circumstances tending to show unsuitability for parole
30 are a previous record of violence, an unstable social history,
31 previous sadistic sexual offenses, a history of severe mental
32 health problems related to the offense, and serious misconduct in
33 prison or jail. Id.

34 Circumstances tending to support a finding of suitability for

1 parole include no juvenile record, a stable social history, signs
2 of remorse, that the crime was committed as a result of significant
3 stress in the prisoner's life, a lack of criminal history, a
4 reduced possibility of recidivism due to the prisoner's present
5 age, that the prisoner has made realistic plans for release or has
6 developed marketable skills that can be put to use upon release,
7 and that the prisoner's institutional activities indicate an
8 enhanced ability to function within the law upon release. Id. at
9 (d). In a recent decision, the California Supreme Court stated
10 that due process is denied when "an inquiry focuse[s] only upon the
11 existence of unsuitability factors." In re Lawrence, 44 Cal. 4th
12 1181, 1208 (2008).

13 Applying these legal principles to the instant matter, the
14 Court concludes that Petitioner has not shown that the Board's
15 decision violated his right to due process. In other words, the
16 Board's decision was supported by "some evidence." First, as to
17 the commitment offense, there is evidence to support the Board's
18 determination that the killing of Chappell was carried out in a
19 manner that was "especially cruel and callous" and that
20 "demonstrates an exceptional[ly] callous disregard for human
21 suffering." (Ans., Lodgement 3 at 91-92.) The record shows that,
22 while armed, Petitioner, displeased that Chappell had not paid him
23 for some drugs, illegally entered Chappell's residence at night
24 while Chappell slept, to reclaim the packet of drugs, and during
25 this burglary shot him to death. These facts indicate that
26 Petitioner intended to retrieve his property by stealth, as shown
27 by his entering at night when Chappell was asleep and unprotected,
28

1 and that he was prepared to use deadly force, as his use of the gun
2 indicates. The fact that Petitioner was prepared to use force to
3 retrieve drugs also supports the Board's finding that the crime was
4 trivial in relation to the offense.

5 Second, contrary to Petitioner's assertion that the Board
6 violated due process by its continued reliance solely on the
7 circumstances of the commitment offense (Am. Pet. at 5(A)), the
8 record indicates that the Board relied on other factors, such as
9 Petitioner's criminal and social history, his psychological report,
10 and his prison disciplinary history. Specifically, the Board noted
11 that Petitioner had nine adult arrests and several serious juvenile
12 offenses on his record, and that he had an unstable social history.
13 His psychological report stated that he had an anti-social
14 personality disorder. Also, while in prison, Petitioner committed
15 three serious disciplinary infractions, which included acts of
16 violence. It is true that a parole authority's continued reliance
17 on the circumstances of the commitment offense as the sole basis
18 for denying parole can, over time, raise due process concerns. See
19 Biggs v. Terhune, 334 F.3d 910, 916 (9th Cir. 2003). "[I]n some
20 cases, indefinite detention based solely on an inmate's commitment
21 offense, regardless of the extent of his rehabilitation, will at
22 some point violate due process, given the liberty interest in
23 parole that flows from the relevant California statutes." Irons v.
24 Carey, 505 F.3d 846, 854 (9th Cir. 2007). In the instant matter,
25 while the circumstances of the commitment offense may in the future
26 cease to have probative value on the issue of Petitioner's
27 suitability for parole, they are, at present and combined with
28

1 other factors, "some evidence" to support the Board's decision.

2 Third, contrary to Petitioner's assertion that the Board
3 merely engaged in a pro forma review of his parole suitability (Am.
4 Pet. at 5), the record indicates that the Board thoroughly examined
5 Petitioner's entire record, took into account the specific
6 circumstances of his social and criminal history, asked relevant
7 questions, and reached a decision after an individualized study of
8 Petitioner's record.

9 Fourth, Petitioner contends that the Board ignored the
10 guidance provided by California's Sentencing Matrix when reaching
11 its decision. (Am. Pet. at 6(A).) Contrary to Petitioner's
12 assertion, the Board is under no duty to apply the matrix once it
13 has determined that a prisoner is unsuitable for parole. In Re
14 Dannenberg, 34 Cal. 4th 1069, 1071 (2005).

15 Fifth, Petitioner's assertion that the Board failed to
16 consider factors in favor of a finding of suitability (Am. Pet. at
17 6) is without merit. The record shows that the Board did consider
18 such parole suitability factors as Petitioner's plans for parole
19 and his participation in self-help programming.

20 Based on this record, the Court concludes that Petitioner has
21 not shown that the Board's decision violated his right to due
22 process. Because the Board's decision did not violate his
23 constitutional rights, the state court's adjudication of the matter
24 did not result in a decision that was contrary to, or involved an
25 unreasonable application of, clearly established federal law, or
26 that resulted in a decision that was based on an unreasonable
27 determination of the facts. Accordingly, Petitioner's due process
28

1 claims are denied.

2 B. Plea Agreement Claim

3 Petitioner claims that the Board violated his plea agreement
4 by failing to give him the "reciprocal benefits" promised to him,
5 that is, the granting of parole. (Am. Pet. at 6(B).)

6 Plea agreements are contractual in nature and subject to
7 contract law standards of interpretation. In re Ellis, 356 F.3d
8 1198, 1207 (9th Cir. 2004) (citing United States v. Hyde, 520 U.S.
9 670, 677-78 (1997)). Thus, a petitioner is entitled to habeas
10 relief if he or she enters into a plea agreement with a state
11 prosecutor, and the prosecutor breaches the agreement. Gunn v.
12 Ignacio, 263 F.3d 965, 969-70 (9th Cir. 2001).

13 Petitioner's claim is without merit because he has received
14 the reciprocal benefit of his plea agreement, that is, a shorter
15 sentence. Specifically, Petitioner received a sentence of fifteen
16 years to life by pleading to second degree murder, rather than a
17 sentence of life imprisonment without parole or death if he had
18 been convicted at trial. The information had charged Petitioner
19 with first degree murder, Cal. Pen. Code § 187, while in the
20 commission of a robbery, first and second degree burglary, id. §§
21 460 and 190.2(a)(17), and a firearm enhancement, id. § 12022.5.
22 (Ans., Lodgement 2 at 1.) Petitioner has received the benefit of
23 his agreement, and has admitted as much. In his plea agreement,
24 Petitioner indicated that he was pleading guilty "to take advantage
25 of a plea bargain." (Ans., Lodgement 10 at 2.)

26 Petitioner's sentence allows for the possibility of parole,
27 provided that he meets the requirements for a finding of parole
28

1 suitability. As discussed above, the Court finds that the Board's
2 decision that Petitioner did not meet the requirements for a
3 finding of parole suitability is supported by some evidence. On
4 this record, Petitioner has not shown that the Board's denial of
5 parole is a breach of his plea agreement.

6 Petitioner's claim is denied.

7 CONCLUSION

8 For the foregoing reasons, the petition for a writ of habeas
9 corpus is DENIED.

10 Petitioner's motion to submit a letter brief (Docket No. 28)
11 is GRANTED. The Court deems the letter brief as properly filed.
12 This order terminates Docket No. 28.

13 The Clerk of the Court shall terminate all pending motions,
14 enter judgment and close the file. Each party shall bear his own
15 costs.

16 IT IS SO ORDERED.

17 Dated: 9/30/09



CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DARRYL RANSOM,

Plaintiff,

v.

BEN CURRY et al,

Defendant.

Case Number: CV08-03571 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 30, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Darryl Ransom CDC E-40704
Correctional Training Facility-Central
FW-315-Low
P O Box 689
Soledad, CA 93960-0689

Dated: September 30, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California